

The purchase of tangible personal property that is transferred to service customers of an auto body shop may result in either Service Occupation Tax liability or Use Tax liability for the servicemen. See 86 Ill Adm. Code 140.101 (This is a GIL.)

July 1, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 22, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are a wholesaler of automotive refinish products. A majority of our sales are to body shops. Our rules of thumb regarding charging sales tax on refinish products are as follows:

1. If the product will become a permanent part of the repaired vehicle, then the product is not taxed. These products would include but are not limited to paint (color), clear coat, primers, hardeners, pin stripes, etc.
2. If the product will not become a permanent part of the vehicle and is used or consumed during the refinishing process, then it is taxed. These products would include but are not limited to reducers, abrasives, shop towels, compounds, etc.

Unfortunately, many of my body shop customers insist that they should not have to pay tax on the #2 items. They claim that since they charge sales tax to the customer on the entire repair, that those consumable products are included.

Other body shop customers agree with certain items that we tax but not others. For example, one of my customers argued that he should not have to pay tax on paint reducers or thinners. I told him that reducers and thinners evaporated from the paint film and therefore are not a permanent part of the vehicle. He disagrees.

Would you please send to me documentation, including any court rulings, that I could give to my customers that explains why certain refinish items are taxed and others are not? Am I taxing my customers correctly? Is it possible that I am overtaxing my customers? In addition, please send 86 Illinois Administrative code 130.2005, 130.2007, and Brochure PIO-37 for further clarification.

Retailers' Occupation Tax and Use Tax apply to sales and use of tangible personal property. They do not apply to receipts from sales of service. Generally, the operation of an auto repair shop to

repair or provide service work on customers' automobiles is subject to the Service Occupation Tax Act 35 ILCS 115/1 et seq. Under this Act, a serviceman is taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, the purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately state the selling price of the tangible personal property being transferred; (2) calculate 50% of the entire bill; (3) Service Occupation Tax on the cost price of the tangible personal property being transferred if they are registered de minimis servicemen; or, (4) Use Tax on the cost price of the tangible personal property being transferred if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under the second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their customers as a tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way a servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.105. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. They do not provide suppliers with Certificates of Resale. These servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

As you can see, a serviceman making purchases of products that will be transferred to his customers will either purchase those products for resale or use, depending upon which of the above methods he uses to calculate his tax liability.

In contrast, a serviceman incurs Use Tax on items such as towels, reducers, abrasives, and other items he consumes during the repair job. These items cannot be purchased for resale because they are not transferred to service customers. The Use Tax is incurred, as indicated earlier, on the privilege of using tangible personal property purchased anywhere at retail from a retailer.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

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Enc.